
(1979) 10 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ 1701 of 1973

Mohan Lal and others

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 30-10-1979

Acts Referred:

Land Acquisition Act, 1894 — Section 9

Citation : (1979) 10 P&H CK 0030

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : S.P. Gunta, for the Appellant; B.S. Wasu for State of Punjab and Mr. S.P. Jain, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Nath Mittal, J.—Briefly, the facts of the case are that property No E. O 139 situated in Dhan Mohalla, was an evacuee property, it was allotted by the Custodian to Kishen Chand, deceased, who was a displaced person, in 1948. Later, it was acquired by the Central Government under Displaced Persons (Compensation & Rehabilitation) Act, 1954 and was transferred to him on December 21, 1963. He died on February 18, 1972, and the Petitioners being the sons, inherited it.

2. By notification No 2262 C-5 /20061 dated March 28, 1963,(sic) the Punjab Government declared some areas including Dhan Mohalla in Jullundur City as Damaged Area under the Punjab Development of Damaged Areas Act, 195 (hereinafter referred as the 95 Act) By another notification, the Punjab Government acquired the said property u/s 6 of the Act. After his death, the Collector Land Acquisition, Jullundur improvement Trust, sent a notice to Kishan Chand deceased on or about April 6, 1973 asking him to file his claim regarding the value of the property, on May 24, 1973. It is alleged that so such notice was given to the Petitioners though Kishan Chand had died and they were his legal representatives and were running a Dhaba on the property under the name of

Sat Kartar Vaishnu Dhaba". They have challenged the acquisition proceedings and notice issued to Kishan Chand deceased.

3. The writ petition has been contested by the Respondents. Respondent No 2 has pleaded that the notification dated March 28, 1963, read with notification No. 375 C-53/10116 dated February 20, 1953 issued by the Punjab Government declaring Dhan Mohalla in Jullundur City as Damaged Area under the 1951 Act was legal and valid. It is further stated that according to the municipal record, the property was standing in the name of Kishan Chand and therefore, the notice was addressed to him but it was revived by the Petitioners. It is averred that consequently the notice was proper.

4. The learned Counsel for the Petitioners has raised four points. First, that no area can be declared as damaged area under Act No. 10 of 1951 Act, secondly, no notice to the Petitioners has been given as required by section 9 of the 1951 Act and, therefore, any subsequent proceedings are illegal the possession of the property cannot be taken from them, thirdly, a part of the property has been declared as damaged area which could not be done and fourthly, that the scheme under which the property is being taken has been quashed and, therefore, no fresh proceedings can be taken unless the property is again declared to be damaged area under the Act.

5. Regarding the first point, it is contended by the learned Counsel that there is another Act known as the East Punjab Damaged Areas Act, 1949, (hereinafter referred to as the 1949 Act). He submits that the property could be declared as damaged area under that Act and not under Clause (d) of Section 2 of the 1949 Act which is a definition clause.

6. I have given a thoughtful consideration to the argument of the learned Counsel but regret my inability to accept it. The two Acts referred to by the learned Counsel are independent Acts. The State Government can proceed under the 1951 Act without invoking the provisions of 1949 Act. Sub-section (3) of Section 1 of the 1951 Act provides that the Act shall come into force at once within the local area of the Amritsar Improvement Trust and in other areas in such date as the State Government may by notification specify. The Act was enforced within the local area of Jullundur improvement Trust with effect from August 1, 1952, when the notification dated July 25, 1952, was published in the Punjab Government Gazette case 1952 LLA 82 Part V), Section 2 d) defines damaged areas as follows:

Damaged area, means any area which the State Government may by notification declare to be a damaged area and shall include the areas already notified under the East Punjab Damaged Areas Act, 1948 (Punjab Act No. X of 1949)." A perusal of the definitions shows that the State Government has the power to notify any area under the 1951 Act to be damaged area. The State Government in pursuance of the aforesaid power declared various areas of Jullundur as damaged areas vide notification dated February 20, 1953 (copy Annexure "B") It

cannot be disputed that Legislature authorise the State Government to make such a provision. The power may be incorporated in any provision in an Act including the definition section it is not said anywhere that the power cannot be granted in a definition section. The counsel has not been able to show that it can be given in a particular way and not by making a provision in a definition section. No fault can be found out with the definition of the term damaged area or the notification thereunder. Consequently reject the contention of the learned Counsel.

7. The contention of the learned Counsel for the Petitioners regarding second point is that the notice u/s 9 of the 1951 Act was issued on April 26, 1973, in the name of Kishan Chand who had died earlier. He submits that the notice was thus illegal. He also argues that the trust now cannot obtain possession of the property. According to him, all subsequent proceedings are also void and liable to be quashed.

8. I have given a due consideration to the argument of the learned Counsel. In order to determine the question it will be proper to refer to some of the provisions of the 1951 Act. Section 3 relates to scheme for the development of a damaged area, Section 4 to publication of scheme, Section 5 to decision of objections and publication of the sanctioned scheme, Section 6 to acquisition of damaged area through the Collector, Section 9 to notice inviting claim to compensation and objections, Section 10 to the duty of an occupier to disclose other interested persons, Section 11 to enquire into claim and objections, Section 12 to execution of scheme by the Trust, Section 13 to total compensation how calculated and Section 15 to make reference to the Tribunal by the Trust. Section 6 provides that the Trust shall within three months from the date of publication of the scheme u/s 5(3), apply to the Collector for the acquisition of the damaged area comprised in the scheme and, if necessary for immediate delivery of the possession of the whole or any part of the area to the Trust. It is further provided therein that the Collector may forthwith deliver or caused to be delivered, to the Trust possession of such area and on such order being made, the area shall thenceforth vest in the Trust free from all encumbrances but subject to the payment in due course of compensation by the Trust in accordance with the provisions of the Act. In the proviso it is stated that the possession of any building or part of the building shall not be taken unless its occupier has been given at least two weeks notice to enable him to remove his movable property from such building. Section 9 relates to the notice for inviting claim to compensation and objections and is as follows:

9. Notice inviting claims to compensation and objections. (1) The Collector shall then cause notices to be posted at convenient places on or near the land comprised in the scheme stating that claims to compensation for all interests in such land may be made to him.

(2). Such notice shall-

(a) give full particulars of the land; and

(b) specify the date, time and place when all persons interested in the land are required to appear before the Collector to state the nature of their respective interests in the land, any objections which they may have to made to demarcation or measurement of the land in which they are interested and the extent and nature of their claims to compensation:

Provided that this date shall not be earlier than fifteen days form the date of posting of the notices: and Provided further, that a person interested may appear personally or by agent and the Collector may in any case require the statement to be made in writing and signed by the party or his agent

(3) The Collector shall also give a notice to the same effect to the occupier, if any, of such land and to all such persons known or believed to be interested or to be entitled to act for persons so interested, if such persons or their agents authorised to receive service on their behalf reside within the revenue district in which the land is situated.

(4) In case any person so interested resides elsewhere and has no such agent, the notice shall be seat to him by post in a letter addressed to him at his last known residence, address or place of business.

(5) In case whereabouts of any such person are not known, such notice may be given by publication. In a newspaper of the description given in Sub-section (1) of Section 4, and if such notice has been published in such newspaper not tess than fifteen days before the date of hearing, ex-parte proceedings may be taken if the person does not appear on that date.

9. After the filing of the claims for compensation etc. by the interested persons, the Collector is required to make an enquiry regard ing objections u/s 11 of the 1951 Act. Thereafter he determines the total compensation u/s 13 and passes the final award. The Collector is requited to file his award in the office of the Collector of the district u/s 14 of the 1951 Act.

10. From a perusal of Sections 6 and 9 it is clear that possession of the acquired land is taken by the Collector prior to service of notice inviting claims to compensation and objections. After the possession has been taken from an owner, the property vests absolutely in the Trust free from all encumbrances under the former section. Section 9 inter alia provides that the Collector shall cause notices to be posted at convenient places on or near the land comprised in the scheme stating that claims to compensation for all interests may be made to him and that no shall give a notice to the same effect to the occupier of such hard(sic) and to can such persons(sic) known or believed to be interested. From the language of the aforesaid section,the inference is that it is mandatory for the Collector to give the notice same(sic) required by the section. If it is not done then the proceedings for the termination of compensation cannot be said to be proper(sic). Section 9 is analogous to Section 9 of the Land Acquisition Act.

11. The aforesaid section came up for interpretation in Velagapudi Kanaka Durga Vs. District Collector, Krishna District, Chilakpadui and Others, and Mani Ram Vs. The State of Punjab and Others, in the former case, Sambasive(sic) Rao held that Section 9(3) is a mandatory provision and the notice thereunder is an integral and essential part of the land acquisition proceedings he further held that failure to give valid notice u/s 9(3) and 10 vitilates the proceedings taken subsequent to and in pursuance of these sections. In Mani Ram's case(supra), similar view was taken by a learned Judge of this Court. He held that the requirement of Section 9(3) of the Act is mandatory and the failure to comply therewith renders the subsequent proceedings illegal and Invalid I am in respectful agreement with the aforesaid view.

12. In the present case, another fact has been brought to my notice by the counsel for the Petitioners. It is that the notice dated April 26, 1973 u/s 9 of the 1951 Act was issued in the name of Kishan Chand, who, as already said above, had died prior to the notice It was received by Mohan Lal Petitioner on April 26, 1973, According to him the notice is therefore illegal the counsel for the Trust sought to argue that as the notice had been received by Mohan Lal, therefore, the notice cannot be said to be bad. I am convinced with the contention of the learned Counsel for the Petitioner. The names of the Petitioners have been ordered to be substituted in place of the name of the deceased in the assessment registers vide order dated April 6(sic), 1973 with effect from April 1, 1972. A note was given in this regard in the column of remarks in the assessment register. Thus, there was no difficulty for the trust to know that Kishan Chand had died and his legal representative had been substituted for him in the assessment register. Notice could be issued to them u/s 9 It has been observed by a Division Bench in The State of Bihar Vs. Lohra Toppo and Others, , that there is no law under which a notice meant for the father who was by then dead could be served on the son without properly bringing him on record as the legal heir and representative of the deceased father it is further held that such a service is no service in the eye of law. The learned Judges made the abovesaid observation while interpreting Section 9 of the Land Acquisition Act. Moreover, the notice, in the present case, was served upon Mohan Lal Petitioner only and not on other Petitioners After taking into consideration all the abovesaid circumstances, I am of the opinion that the Trust has not complied with the provisions of Section 9 of the 1951 Act.

13. I have already referred to some provisions of the Act. under the 1951 Act, possession of the property sought to be acquired is taken prior to the issuance of notice u/s 9 and once the possession is taken, the property vests in the trust absolutely. After the issuance of the notice, the proceedings for determination of the compensation are started. The effect of the non common(sic) been(sic) the provisions of Section 9 in my view is that the proceeding for compensation of compensation become illegal. The proceeding for taking possession are not affected in any way by not complying(sic) with the provisions of the section. The Collector can serve a fresh notice u/s 9 and then proceed for the determination

of the compensation. In the present case, at the time of admission of the writ petition, dispossession of the Petitioner had been staying . In view of the aforesaid discussion, I am of the opinion, that the trust can take the possession of the property u/s 6 as non- compliance with the provisions of Section 9 does not effect its rights to do so . The compensation shall, however, be determined after service of the notice on the Petitioners.

14. The contention of the learned Counsel for the Petitioners regarding the third point is that some property of the Petitioners has been acquired whereas a part of it has been left with them. He submits that the part of the property left is of no use for them. On the other hand, the counsel for the Trust has vehemently argued that the part of the property which constitutes damaged area according to the notification, has been acquired. He submits that the part of the property which does not fall within the damaged area cannot be acquired and, therefore, it has been left with the Petitioners. He further submits that the Trust is ready to acquire the part of the property which has been left, by negotiation, in case the Petitioners make an application in that regard.

15. I have heard the learned Counsel and find force in the contention of the learned Counsel for the Respondent. The Petitioner have not made any allegation that the part of the property left out of the acquisition proceedings is situated within the Dhan Mohalla. If the property is not situated within that Mohalla, the Trust had no right to acquire it, Consequently, it had no other alternative but to give up that part of the property which did not fall within that Mohalla. The Trust has fairly given an offer that in case the Petitioner want that the property which has been given up by it be acquired, they can file an application for doing so and the Trust will take it through if negotiations. In view of the aforesaid circumstances, I reject the contention of the learned Counsel for the Petitioners.

16. The contention of Mr. S. P. Gupta on the fourth point is that the scheme under which the property has been taken has already been quashed and, therefore no fresh proceedings can be taken unless the Mohalla is again declared as damaged area under the 1951 Act. In support of the contention that the earlier proceedings had been quashed he made a reference to a decision of this Court in Civil Writ Petition No. 1533 of 1963 (filed by Petitioners' father) decided on December 16, 1958. The case has since been reported as *Kishan Chand v. The Jullundur Improvement Trust, and others* I. L. R. (1970) 1 P&H. 645. The point has not been taken in the writ petition. The counsel for the Respondent has submitted that unless it was taken in the writ petition, it will not be possible for him to argue on the matter as In order to determine the point some additional facts were required. I agree with the learned Counsel for the Respondent. It is a Well settled principle that if a point has not been taken in a petition, the Petitioners cannot be allowed to raise it at the time of arguments. It may be relevant to mention that the Petitioners filed a writ petition No. 218 of 1976 (*Mohan Lal and Ors. v. The State of Punjab*), for quashing the scheme, which was dismissed on February 12, by a Division Bench after notice of motion. In the

circumstances, Kishan Chand's case (supra) is of no help to the Petitioners. Consequently, Mr. Gupta cannot be allowed to raise the point.

17. For the aforesaid reasons, I partly accept the writ petition as indicated above. In view of the partial success of the Petitioners, I make no order as to costs.